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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,585	12/21/2000	Mark D. Braxton	GP-301127	2035

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ANTHONY LUKE SIMON
General Motors Corporation
Legal Staff Mail Code 482-C23-B21
P.O. Box 300
Detroit, MI 48265-3000

EXAMINER

USTARIS, JOSEPH G

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 09/20/2006

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Technology Center 2600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/745,585
Filing Date: December 21, 2000
Appellant(s): BRAXTON, MARK D.

Anthony Luke Simon
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 24 March 2005 appealing from the Office action mailed 24 February 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

A previous Appeal Brief was filed on 15 November 2004.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,025,868

Russo

2-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 3 is rejected under 35 U.S.C. 102(e) as being anticipated by Russo (US006025868A).

Russo discloses a stored program pay-per-play system where a controller or “entertainment device” scans or “monitors” program schedules that is broadcasted and selects programs or “for-demand movie data” to record based on viewer/listener preferences (See column 3 lines 5-25 and column 4 line 20). Furthermore, the controller disclosed by Russo also provides conventional video program service or “conventional entertainment” (See column 3 lines 45-55). The controller receives the programs and stores them on a storage unit (See Fig. 2 element 110 and column 7 lines 43-53). The controller provides a list or “selection of choices” to the user of the stored titles or “stored for-demand movie data”, where the user can select a stored title or “designating an entertainment choice” to be viewed or played or “designated entertainment choice to provide entertainment to the user” (See column 10 line 58 – column 11 line 5). Furthermore, Russo monitors the broadcast channels for the “for-demand movie data” and can record the desired programs automatically without the user or “monitors the channels as a background function undetectable by the user” (See column 8 line 64 – column 9 line 20 and column 9 line 48 – column 10 line 19).

(10) Response to Argument

Appellant argues with respect to claim 3 that Russo does not disclose a system that can monitor and store movie data as a background function not apparent to the

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user. However, upon further review and reading the claims in the broadest sense, Russo discloses that the system can monitor broadcasts for supplemental information/future schedules that is used to locate and record desired programs automatically and unattended based on viewer preferences (See column 8 line 64 – column 9 line 20 and column 9 line 48 – column 10 line 19). Therefore, the user is not aware of all the processing that occurs within the system.

Appellant further argues that Russo does not disclose recording movies as a background function not apparent to the user. However, as discussed above, Russo does disclose a system that provides automatic and unattended recording where the user is not aware of all the processing that occurs within the system.

Furthermore, appellant argues that the automatic recording and future schedules disclosed by Russo teaches away from applicant's invention. However, the system scans or "monitors" the future schedules to locate and automatically record any programs that meets the viewer's preferences/criteria as a background function not apparent to the user (See column 9 line 61 – column 10 line 3).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Joseph G. Ustaris
AU 2623

Conferees:

Chris Kelley
John Miller



CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600



JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600